

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,517

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Appeal of)

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INTRODUCTION

The petitioner seeks an expungement of a finding made

by the Department of Social and Rehabilitation Services (SRS) that she neglected her three children. A Motion to Deny the Petitioner's Request has been filed by the Department asserting that the Board is bound by an adjudication made by a Family Court in a CHINS petition covering the same matters.

FINDINGS OF FACT

On December 23, 1994, custody of the petitioner's three children was placed with SRS by the Addison County Family Court pursuant to an emergency detention order in a CHINS proceeding. At the CHINS merits hearing on January 6, 1995, the Court found the children to be in need of care and supervision based, inter alia, on the allegations by SRS that the petitioner had failed to provide them with adequate shelter and medical care. The Court ordered a disposition report that included a psychological evaluation of the petitioner.

In June, 1995, while the CHINS proceedings were still pending, the petitioner filed an appeal with the Human Services Board of SRS's decision "substantiating" the report of neglect of the children by the petitioner. The hearing officer subsequently continued the petitioner's appeal until the CHINS proceedings were concluded.

On October 17, 1995, the Family Court filed a Decision and Order in the CHINS proceeding.⁽¹⁾ After extensive findings regarding the filthy conditions in the petitioner's home and her bizarre and eccentric behavior with the children, the Court concluded, inter alia, that the petitioner has not provided "a safe healthy (sic) and stable home for the children", that "she is unfit, and demonstrably unable to care for her children at the present time", and that her "disorder in thought and conduct place (sic) her children at risk of medical, educational, physical and emotional neglect". The Court then ordered that custody of the children remain with SRS pending the development and implementation of a new plan of family reunification. (See Decision and Order, pp. 9-10.)

ORDER

The Department's decision that the petitioner neglected her three children is affirmed, and the request to expunge the SRS registry record of that neglect is denied.

REASONS

The petitioner has made application for an order to expunge a substantiation of abuse placed by SRS in its registry following the initiation of the CHINS proceedings in December, 1994. This application is governed by 33 V.S.A. § 4916 which provides in pertinent part as follows:

(h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

Under the statute's definitions, a report is substantiated when "the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10). The first issue presented here is whether the Board is bound by decisions of the Family Court concluding that a child has been neglected in the context of a CHINS petition or whether it is required to make its own determination as to whether neglect occurred in the context of the expungement request.

The Board has held in Fair Hearing Nos. 11,444 and 12,309 that the statute at 33 V.S.A. § 4916, (cited above) requires it to make an independent determination as to whether abuse occurred as that term is defined in the statute that sets up the reporting and registry requirements, regardless of such a conclusion in another forum under another statute. However, the Board also concluded in those same fair hearings that it may be precluded by the doctrine of collateral estoppel from retrying facts found in a CHINS proceeding if the criteria set out by the Vermont Supreme Court for preclusion are met:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits;
- (3) the issue is the same as the one raised in the later action;
- (4) there was a full and fair opportunity to litigate the issue in the earlier action; and
- (5) applying preclusion in the later action is fair.

Trepanier v. Getting Organized, Inc.,

155 Vt. 259, 265 (1990)

As was the case in the prior fair hearings, the above criteria are clearly met in this case. The petitioner

herein was a party in the CHINS proceedings, which were resolved by a final judgment of disposition. The issue of neglect of the petitioner's children was clearly before the Court and was included in the evidence and findings. The petitioner was represented by counsel throughout the CHINS process. The procedural protections in terms of discovery and representation were superior to those found in an administrative hearing. If any relief is available to the petitioner on the findings of fact, it is surely from the Vermont Supreme Court, not from this Board.

As the Board is precluded from making its own new fact findings in this matter, the petitioner cannot put on new evidence and retry this matter. The Family Court made extensive findings regarding the filthy living conditions in the petitioner's home and the petitioner's bizarre behavior toward the children. Those findings are binding on the Board. The only task left for the Board is to determine whether the findings and conclusions of the Family Court constitute "neglect" as that term is defined in the statute which sets up the reporting and registry process.

33 V.S.A. § 4912 includes the following provisions:

(2) An "abused or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare or a child who is sexually abused by any person.

(3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:

...

(B) Failure to supply the child with adequate food, clothing, shelter or health care. . . .

There is no question in this case that the findings and conclusions of the Family Court constitute clear and unequivocal findings of neglect and harm to the children within the meaning and intent of the above provisions. Therefore, the Department must be found to have met its burden, and the petitioner's request to expunge the finding is denied.

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1. The Court's Findings of Fact and Conclusions are incorporated by reference herein.